

## § 930.126

(including procedural arguments) not identified in the appellant's notice of appeal shall not be considered by the Secretary.

(c) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project valued in excess of \$1 million shall be considered a major appeal and the application fee is \$500.00. All other appeals shall be considered minor appeals and the application fee is \$200.00.

(d) The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230; a copy of the notice of appeal to the objecting State agency; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(e) No extension of time will be permitted for the filing of a notice of appeal.

(f) The Secretary shall waive any or all fees if the Secretary concludes upon review of the appellant's fee waiver request that such fees impose an economic hardship on appellant. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit the appropriate fees to the Secretary within 10 days of receipt of the Secretary's denial. If the fees are not received by the 10th day, then the Secretary shall dismiss the appeal.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 830, Jan. 5, 2006; 71 FR 75865, Dec. 19, 2006]

## § 930.126 Consistency appeal processing fees.

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing appeals to the Secretary under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the Federal Register Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a deci-

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sion pursuant to section 319(a)(2) of the Act (16 USC 1465(a)(2)) and § 930.130 of this subpart.

## § 930.127 Briefs and supporting materials.

(a) Within 30 days of submitting the notice of appeal, as specified in § 930.125, the appellant shall submit to the Secretary its principal brief accompanied by the appendix described in paragraph (c) of this section. Within 60 days of the appellant's filing of the notice of appeal, the State agency shall submit to the Secretary its principal brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section. Not later than 20 days after appellant's receipt of the State agency's brief, appellant may submit to the Secretary a reply brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section.

(b) A principal brief shall not exceed 30 double-spaced pages; appellant's reply brief shall not exceed 15 double-spaced pages. Any table of contents, table of citations, or certifications of mailing and/or service do not count toward the page limitations.

(c) The appellant must prepare and file an appendix with its brief containing:

- (1) Its consistency certification;
- (2) The State agency's objection; and
- (3) All such supporting documentation and material as the appellant deems necessary for consideration by the Secretary. The State agency (or appellant on reply) shall cite to appellant's appendix or may file a supplemental appendix to include additional documentation and material as the State agency (or appellant on reply) deems necessary for consideration by the Secretary that was not included in appellant's appendix (or the State agency's supplemental appendix). The parties are encouraged to discuss the contents of appellant's appendix in order to include in the appendix as much of the supporting documentation and material as any party deems necessary for consideration by the Secretary. In an appeal for an energy project, supporting documentation and material shall be limited to the parts of the consolidated record described in

paragraph (i)(1) of this section to which the appellant or the State agency wishes to direct the Secretary's attention.

(d)(1) Both the appellant and State agency shall send two copies of their briefs and supporting materials to the Office of General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910. One copy must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA.

(2) The appellant and State agency shall serve on each other at least one copy of their briefs, supporting materials, and all requests and communications submitted to the Secretary, at the same time that materials are submitted to the Secretary.

(3) Each submission to the Secretary shall be accompanied by a certification of mailing and/or service on the other party. Service may be done by mail or hand delivery. Materials or briefs submitted to the Secretary not in compliance with this subpart may be disregarded and not entered into the Secretary's decision record of the appeal.

(e)(1) The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties. The appeal decision record is composed of the briefs and supporting materials submitted by the State agency and appellant, public comments and the comments, if any, submitted by interested Federal agencies. As noted in § 930.128(c)(1), the Secretary gives deference to the views of interested Federal agencies when commenting in their areas of expertise and takes notice of relevant administrative decisions, including licenses or permits, related to an appellant's proposed activity when submitted to the appeal decision record. The Secretary determines the content of the appeal decision record. The Secretary may determine, on the Secretary's own initiative, that additional information is necessary to the Secretary's decision, including documents prepared by Federal agencies pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act

(16 U.S.C. 1531 *et seq.*), and may request such information.

(2) To promote efficient use of time and resources, the Secretary may, upon the Secretary's own initiative, require the appellant and the State agency to submit briefs and supporting materials relevant only to procedural or jurisdictional issues presented in the Notice of Appeal or identified by the Secretary. Following a decision of the procedural or jurisdictional issues, the Secretary may require briefs on substantive issues raised by the appeal if necessary.

(3) The Secretary may require the appellant and the State agency to submit briefs in addition to those described in paragraphs (a) and (e) of this section as necessary.

(4) Any briefs not requested or required by the Secretary may be disregarded and not entered into the Secretary's decision record of the appeal.

(f) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion.

(g) The Secretary may extend the time for submission, and length, of briefs and supporting materials for good cause.

(h) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in § 930.129(b) and (c).

(i) Appeal Decision Record for Energy Projects. The provisions of this paragraph apply only to appeals for energy projects.

(1) The Secretary shall use the consolidated record maintained by the lead Federal permitting agency as the initial record for an appeal under this subpart for energy projects.

(2) The appellant's notice of appeal required by § 930.125(a) and (b) must be accompanied by two copies of the consolidated record maintained by the lead Federal permitting agency. One copy of the consolidated record must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA. Notwithstanding § 930.125(e), the Secretary may

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extend the time for filing a notice of appeal in connection with an energy project for good cause shown to allow appellant additional time to prepare the consolidated record for filing.

(3) The appellant and the State agency shall submit briefs as required by paragraphs (a), (b) and (c) of this section.

(4) Supplemental information may be accepted and included in the decision record by the Secretary only as allowed by § 930.130(a)(2).

[71 FR 830, Jan. 5, 2006, as amended at 71 FR 75865, Dec. 19, 2006]

## § 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide public notice of the appeal within 30 days after the receipt of the Notice of Appeal by publishing a Notice in the FEDERAL REGISTER and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) Except in the case of appeals involving energy projects, the Secretary shall provide a 30-day period for the public and interested Federal agencies to comment on the appeal. Notice of the public and Federal agency comment period shall be provided in the Notice required in paragraph (a) of this section.

(c)(1) The Secretary shall accord greater weight to those Federal agencies whose comments are within the subject areas of their technical expertise.

(2) The Secretary may, on the Secretary's own initiative or upon written request, for good cause shown, reopen the period for Federal agency comments before the closure of the decision record.

(d) Except in the case of appeals involving energy projects, the Secretary may hold a public hearing in response to a request or on the Secretary's own initiative. A request for a public hearing must be filed with the Secretary within 30 days of the publication of the Notice in the FEDERAL REGISTER required in paragraph (a) of this section. If a hearing is held by the Secretary, it shall be noticed in the FEDERAL REGISTER and guided by the procedures described within § 930.113. If a hearing is

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held by the Secretary, the FEDERAL REGISTER notice for the hearing shall reopen the public and Federal agency comment period and shall close such comment period 10 days after the hearing.

[71 FR 831, Jan. 5, 2006]

## § 930.129 Dismissal, remand, stay, and procedural override.

(a) The Secretary may dismiss an appeal for good cause. A dismissal is the final agency action. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit a brief or supporting materials within the required period;

(3) Failure of the appellant to pay a required fee;

(4) Denial by the Federal agency of the federal license, permit or assistance application; or

(5) Failure of the appellant to base the appeal on grounds that the proposed activity is either consistent with the objectives or purposes of the Act, or necessary in the interest of national security.

(b) If the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part, the Secretary shall override the State's objection. The Secretary may make this determination as a threshold matter.

(c) The Secretary may stay the processing of an appeal in accordance with § 930.130.

(d) The Secretary may remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, not previously provided to the State agency during its consistency review, is submitted to the Secretary. The Secretary shall determine a time period for the remand to the State agency. The time period for remand must be completed within the period described in § 930.130 for the development of the Secretary's decision record. If the State agency responds that it still objects to the activity,